No. 3384

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United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

NEIL GUINEY,

Appellant,

vs.

R. P. BONHAM, as United States Inspector in Charge of Immigration for the District of Oregon.

Appellee.

Brief of Appellee

Upon Appeal from the United States District Court for the District of Oregon.

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STATEMENT

The appellant, Neil Guiney, is an alien and a native of Canada. He came to this country about March 1, 1913. He admits having joined the I. W. W. Organization in October, 1916, and since the latter part of September, 1918, and at the time of his arrest was secretary of the Lumber Workers' Branch of the I. W. W. He was also at various times a stationary delegate, branch secretary and traveling delegate of that organization; his duties consisted of looking after the accounts of the organization, supervising the work, keeping in touch with the members, answering correspondence and superintending the distribution of I. W. W. literature.

The appellant was arrested at Portland, Oregon, on February 20, 1919, upon a warrant of arrest, duly issued by the Acting Secretary of Labor, under the provisions of the Immigration Act of February 5, 1917, and after a hearing accorded to him by Immigrant Inspector W. F. Watkins, the Acting Secretary of Labor on May

27, 1919, found that the appellant, Neil Guiney, an alien, was in the United States in violation of law, to-wit, that he had been found advocating or teaching the unlawful destruction of property and thereupon ordered that he be deported to the country whence he came.

On June 13, 1919, the appellant being in custody under the warrants of arrest and deportation, sued out a writ of habeas corpus from the District Court and that Court having upon hearing ordered the dismissal of the writ, he now prosecutes this appeal.

From the return of the appellee, it appears that the appellant is an alien; that he was arrested upon warrant of deportation duly issued by the Secertary of Labor and that as a result of the hearing conducted in accordance with the Rules and Regulations of the Department, the Secretary of Labor found that the appellant was in the United States in violation of the Immigration Act and warrant of deportation was thereupon issued, which the appellee set up as his authority for the detention of the appellant. Copies of the warrant of arrest and order of deportation, together with the original file, constituting the complete record in this case, were

attached to and made a part of the return.

In his behalf, the appellant contended that the record of his examination contained no evidence sufficient to substantiate the charge and that the findings of the Commissioner General of Immigration appeared to have been based upon extraneous matter not properly incorporated in the record.

The District Court held that from a careful review of the testimony, it appeared that the appellant was a member and secretary of the Lumber Workers' Industrial Union of the I. W. W., whose duties were to supervise the work of the organization and superintend the distribution of I. W. W. literature among its members; that he avows sympathy with the organization "to a large extent" and "as a whole, with the object and aims of the I. W. W. as set forth in its preamble and much of its literature" he is in thorough accord; that while the appellant denied that he believed in sabotage, or that the order endorsed its use, that the literature promulgated by the organization, did undoubtedly advocate its use and was so shown by the record and that there could be no question but that the record supported the findings of the Commis-

sioner General. As to the second point, the Court held that the extraneous matter complained of was not properly a part of the record, could not have been so considered and that obviously it had no influence with the Commissioner General. (Trans. P. 301). As a matter of fact, this is clearly apparent and readily demonstrable from a perusal of the memorandum of the Commissioner General, dated May 1, 1919, which is attached to the record and which practically constitutes the detailed decision of the Department, being approved by the Acting Seceretary of Labor (Trans. P. 27).

This decision of the Court is attacked upon the following grounds:

1. That the warrant of deportation is void in that it was issued more than five years after the appellant's entry into the United States.

2. That there was no evidence produced at the hearing to sustain the finding that the appellant had ever advocated or taught the unlawful destruction of property.

3. That the hearings held were not conducted in accordance with the forms and

processes of law, in that evidence was submitted to and considered by the Secretary of Labor, without the knowledge of the appellant and which he had no opportunity to examine, explain or rebut.

These objections to the order of deportation are made the basis of the appellant's assignments of error upon this appeal and will be considered and disposed of in the order above enumerated.

I.

RE LEGALITY OF WARRANT OF DEPORTATION

It is contended that because the warrant was issued on February 18th, 1919, and at the time said order and warrant of deportation was made, to-wit: May 27th, 1919, more than five years had expired since the appellant's entry in the United States on to-wit: March 1st, 1913, that therefore the warrant was void.

This contention is apparently made upon the theory that the Immigration Act under which this deportation proceeding was instituted, specifically fixes five years as the period of limitation within which aliens found in the United States WHO ADVOCATE OR TEACH THE UNLAW-

FUL DESTRUCTION OF PROPERTY may be deported.

While it is true that the warrant and order of deportation charge the alien with a violation of the Immigration Act of February 5th, 1917, the fact remains that this Act, insofar as it related to aliens who advocate or teach the unlawful destruction of property, was superseded and amended by the Immigration Act of October 16th, 1918, which was in full force and effect at the time these deportation proceedings were instituted. The order of deportation specifically recited the ground of deportation; to-wit: that the alien was found advocating or teaching the unlawful destruction of property, which charge squarely placed the alien in one of the classes excluded by the Immigration Act of October 16th, 1918, reading as follows:

> "Sec. 1. That aliens who are anarchists; aliens who believe in or advocate the overthrow by force or violence of the Government of the United States or of all forms of law; aliens who disbelieve in or are opposed to all organized government; aliens who advocate or teach the assassination of public officials; ALIENS WHO ADVOCATE OR

TEACH THE UNLAWFUL DESTRUCTION OF PROPERTY; aliens who are members of or affiliated with any organization that entertains a belief in, teaches, or advocates the overthrow by force or violence of the Government of the United States or of all forms of law, or that entertains or teaches disbelief in or opposition to all organized government, or that advocates the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the government of the United States or of any other organized government, because of his or their official character, or that advocates or teaches the unlawful destruction of property, shall be excluded from admission into the United States.

Sec. 2. That any alien who, at any time after entering the United States is found to have been at the time of entry, or to have become thereafter, a member of any of one of the classes of aliens enumerated in Section One of this act, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported in the manner provided

by the immigration act of February fifth, 1917.

The provisions of this section shall be applicable to the classes of aliens mentioned in this act irrespective of the time of their entry into the United States."

However, the contention of petitioner, with respect to the limitation fixed by the Act of February 5th, 1917, is absolutely without merit, and is palpably frivolous.

Section 19 of the Act of February 5th, 1917, reads as follows:

"That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this act; ANY ALIEN WHO AT ANY TIME AFTER ENTRY SHALL BE FOUND ADVOCATING OR TEACHING THE UNLAWFUL DESTRUCTION OF PROPERTY * * * shall upon the warrant of the Secretary of Labor be taken into custody and deported."

It must be plainly apparent that the words

"at any time after entry," without specifying any limitation of time, as affecting aliens guilty of advocating the unlawful destruction of property, permit of no such interpretation as here urged by appellant. In fact, the true and only logical interpretation to be drawn therefrom, is reiterated in Rule 22 (t) of the Immigration Rules of May 1st, 1917:

> "Any alien who shall be found advocating or teaching the unlawful destruction of property; no limitation; retrospective."

But in any event, we feel that the plain language of the Act of October 16th, 1918, superseding and amending the Act of February 5th, 1917, insofar as this class of aliens is concerned, clearly disposes of the question involved, thereby rendering further discussion on this point unnecessary.

However, we cannot refrain from pointing out the serious consequences of adopting the interpretation of appellant which he sets up as a shield from the manifest purpose of Congress to exclude aliens of his class, irrespective of the time of their entry in the United States. It would mean that unless an alien, within five

years after his entry, into the United States, advocated or taught the unlawful destruction of property, he could thereafter, while still disdaining American citizenship, proceed along those prohibited lines, with impunity. The mere suggestion of this situation would indicate the fallacy of such a contention. Congress had no intention of rendering this country helpless against subsequent insiduous attacks of ungrateful aliens seeking to undermine it, and the Immigration Act of February 5th, 1917, while prescribing limitations in certain specific instances, was clearly made virile enough to reach this class of aliens, at any and all times. This is emphasized by the passage of the Act approved October 16, 1918, entitled "An Act to exclude and expel from the United States aliens who are members of the anarchistic or similar classes."

It is further urged by appellant that while the direct charge upon which the warrant of arrest and order of deportation were issued, may be embraced by the Act of October 16th, 1918, the proceedings are alleged to have been brought under the Act of February 5th, 1917, as recited in the warrant, and that therefore the Government is confined to the remedy afforded by that

Act, and none other.

In criminal cases, where naturally the rules are more exacting, it is elementary that the indorsement of a statute supposed, though erroneously, to support the indictment, does not affect its validity. So, therefore, in this case, an erroneous reference to the statute involved cannot avail the petitioner, so long as he is given sufficient information of the nature of the charge to bring him within one of the classes excluded by law.

As stated in the case of *U. S. vs. Uhl,* 211 Fed. 628:

> "The warrant of arrest for the deportation of an alien need not have the formality and particularity of an indictment, but it must give the alien sufficient information of the acts relied on to bring him within the excluded classes to enable him to offer testimony in refutation at the hearing.
>
> * * * *
>
> Irregularities in the order of arrest do not affect the status of an alien held upon a warrant of deportation after a fair hearing, nor does the fact that the warrant of deporta-

tion is based in part upon a charge not stated in the warrant of arrest."

To like effect are the cases of *Nishimura Ekiu vs. U.S.,* 142 U. S. 651, *Ex Parte Poulioy,* 196 Fed. 437; *U. S. vs. Williams,* 200 Fed. 538.

II.

RE EVIDENCE TO SUPPORT FINDINGS

Before proceeding with the discussion under this heading, it may be well to bear in mind certain well established principles as to the power of exclusion, and the questions open for review by the courts in deportation cases.

The right of a nation to expel or deport foreigners who have not been naturalized or taken any steps toward becoming citizens of the country, rests upon the same grounds and is as absolute and unqualified as the right to prohibit and prevent their entrance into the country. (*Fong Yue Ting vs. U. S.,* 149 U. S. 698.)

The right to exclude or to expel aliens, or any class of aliens, absolutely or upon certain conditions, is an inherent and inalienable right of every sovereign and independent nation, essential to its safety, its independence and its welfare. It is vain to deny the existence of this

right by alleging that human liberty is the most sacred of all natural rights, for the right of living unrestricted in any place may be subjected to limitations in the general interest of political community, as may all rights. To such persons who fall short of living up to those obligations which arise from the enjoyment by them of the hospitality of the particular nation and turn out to be objects of anxiety or permanent sources of danger to the state which receives them, there is no obligation on the part of the state to exercise generosity up to the point of imposing upon its authorities the obligation of keeping them under surveillance for the purpose of thwarting their criminal machinations. (*Bouve on Exclusion of Aliens,* p. 4.)

Proceedings for the exclusion or expulsion of aliens have invariably been held by the courts to be proceedings not criminal in nature, and deportations not to be punishment for crime.

Mr. Justice Gray, speaking in *Fong Yue Ting vs. U. S.* 149 U. S. 698, says:

> "Deportation is the removal of an alien out of the country simply because his presence is deemed inconsistent with the public

welfare, and without any punishment being imposed or contemplated, either under the laws of the country of which he is sent, or those of the country to which he is taken."

The relative powers of the legislative, executive and judicial branches of the government, touching upon the exclusion of aliens, are to be found in the following excerpts from Supreme Court decisions:

"Congress has power to exclude aliens from, and to prescribe the conditions on which they may enter the United States; to establish regulations for deporting aliens who have illegally entered, and to commit the enforcements of such conditions and regulations to executive officers. Deporting, pursuant to law, an alien who has illegally entered the United States, does not deprive him of his liberty without due process of law."

Turner vs. Williams, 194 U. S. 279.

"The final determination of the fact on which the right to land depends may be entrusted by Congress to executive officers, and in such a case as in all others, in which a statute gives a discretionary power to an of-

ficer, to be exercised by him upon his own opinion of certain facts, he is made the sole and exclusive judge of the existence of those facts, and no other tribunal, unless expressly authorized by law to do so, is at liberty to re-examine or controvert the sufficiency of the evidence on which he acted. It is not within the province of the judiciary to order that foreigners who have never been naturalized nor acquired any domicile or residence in the country pursuant to law, shall be permitted to enter, in opposition to the constitutional and lawful measures of the legislative and executive branches of the national government."

Nishimura Ekiu vs. U. S. 142 U. S. 651.

"The decision of the Department is final, but that is on the presupposition that the decision was after a hearing in good faith, however summary in form.

* * * *

But unless and until it is proved to the satisfaction of the judge that a hearing properly so called was denied, the merits of the case are not open, and we may add, the de-

nial of a hearing cannot be established by proving that the decision was wrong."

Chin Yow vs. U. S. 209 U. S. 8.

"A series of decisions in this court has settled that hearings or proceedings for deporting aliens before executive officers may be made conclusive when fairly conducted. In order to successfully attack by judicial proceedings the conclusions and orders made upon such hearings, it must be shown that the proceedings were manifestly unfair, that the action of the executive officers was such as to prevent a fair investigation or that there was a manifest abuse of the discretion committed to them by the statute. In other cases the order of the executive officers within the authority of the statute is final."

Low Wah Suey vs. Backus, 225 U. S. 460.

"The evidence being adequate to support the conclusions of fact of the Secretary of Labor, and there having been a fair hearing, these findings are not subject to review by the courts."

Zakonaits vs. Wolf, 226 U. S. 272.

"It is entirely settled that the authority of

Congress to prohibit aliens from coming within the United States and to regulate their coming includes authority to impose conditions upon the performance of which the continued liberty of the alien to reside within the bounds of this country may be made to depend; that a proceeding to enforce such regulation is not a criminal prosecution, within the meaning of the 5th and 6th amendments; that such an inquiry may be properly devolved upon an executive department or subordinate officials thereof and that the findings of fact reached by such officials after a fair, though summary hearing, may constitutionally be made conclusive, as they are made by the provisions of the act in question."

Lapina vs. Williams, 232 U. S. 78.

"Where there was evidence sufficient to justify the Secretary of Labor in concluding that the alien was within the prohibitions of the Alien Immigration Act, and the hearing was fairly conducted, the decision of the Secretary is binding upon the courts."

Lewis vs. Frick, 223 U. S. 291.

To like effect are the following cases found in the Federal Reports:

In Re Tang Tung, 168 Fed. 488.
Ex Parte Long Luck, 173 Fed. 208.
U. S. vs. Williams, 190 Fed. 686.
Frick vs. Lewis, 195 Fed. 693.
Ex Parte Pouliot, 196 Fed. 437.
Moy Guey Lum vs. U. S., 211 Fed. 91.
U. S. vs. Uhl, 211 Fed. 628.
U. S. vs. Uhl, 215 Fed. 573.
Ex Parte Hidekumi Iwata, 219 Fed. 610.
Healy vs. Backus, 221 Fed. 358.
Whitefield vs. Henges, 222 Fed. 745.
U. S. vs. Jong You, 225 Fed. 1012.
Wallis vs. U. S., 230 Fed. 71.

The following cases decided by this Circuit are submitted as indicative of the views entertained by this Court upon the subject in issue:

> "In the present case the executive officers found that the aliens were persons likely to become a public charge. This is a ground of exclusion provided by law. In reaching this conclusion, the officers gave the aliens the hearing provided by the statute. This is as far as the court can go in examining such

proceedings. It will not inquire into the sufficiency of probative facts or consider the reasons for the conclusions reached by the officers."

White vs. Gregory, 213 Fed. 768.

"Congress may exclude aliens, regulate their coming, provide for their deportation, and confer on the executive department or subordinate officials thereof the duty to enforce the law.

* * * *

A proceeding to deport an alien is not a criminal prosecution, within the fifth and sixth amendments, and an alien may be deported without a hearing of a judicial character."

Choy Gum vs. Backus, 223 Fed. 487.

"The alleged illegality of her restraint consists in the abuse of discretion on the part of the immigrant inspectors in failing to give her a fair and impartial hearing. We have examined the testimony and we do not think it necessary to repeat it here. The Immigrant Inspector was of the opinion that the evidence was sufficient to show that she was

> guilty of the offense charged in the warrant. There was evidence taken upon the examination which tended to show that she was guilty of the charge. We are not required to weigh the evidence.
>
> *Chan Kam vs. U. S.* 230 Fed. 990.

It is nowhere held that the courts have the right to review the action of the Department of Labor in the matter of admitting or weighing evidence or to consider whether the conclusions drawn by these officials were right or wrong.

As apparent from the foregoing authorities, the only questions to be determined by this court are:

> (1) Whether there was a fair hearing accorded to the alien;
>
> (2) Whether there was *any* substantial testimony, though slight, upon which the Secretary of Labor, as the executive officer charged with the power and duty of deportation could find that the alien was in the United States in violation of the law.

As the only grounds upon which the alien contends that a fair hearing was not accorded

him, are predicated upon his assertion that evidence was introduced into the record which he had no opportunity to meet, and forms the basis of a subsequent assignment of error, we shall, under this assignment, proceed to take up the question of the sufficiency of the evidence to support the Secretary's findings.

In our discussion upon this question, we desire at the outset to make it clear that we shall not consider or refer in any way whatsoever to any of the extraneous testimony, objected to, but shall confine our discussion to the testimony which the alien, himself, gave, together with such exhibits as were specifically called to his attention, and concerning which, an opportunity was afforded him to make such explanation as he desired in connection therewith.

The record in this case shows that on Feb. 20, 1919, the first hearing in this proceeding was had (Trans. P. 254). At that time W. F. Watkins, Immigrant Inspector, informed the appellant, Neil Guiney, that the purpose of the hearing was to afford him an opportunity to show cause why he should not be deported; the warrant of arrest was read and explained to him

and thereupon, Neil Guiney, testified as follows:

That he was born in Lillooet, British Columbia, on Feb. 3rd, 1890, was single, had never been naturalized in this country and was still a subject of Canada; that he came to this country in March, 1913, entering at Gateway, Montana; that his occupation is that of lumberjack, and at the time of his arrest and hearing was Secretary of the Lumber Industrial Union of the I. W. W., having been a member of the I. W. W. since October 7th, 1916, and as Secretary thereof, since October 1st, 1918. In addition to that position, he had also been stationary delegate, branch secretary and traveling delegate of that organization; that he had just opened up his headquarters for the I. W. W. in Portland, when arrested; that there are about 35,000 members of the Lumber Industrial Workers Union; that he received a salary of $28 a week as Secretary; that he registered under the Selective service law, but claimed and secured exemption from service on the ground of being an alien;

Q. Why did you not return to Canada and serve in the military forces of that country during the war?

A. I don't know as there was any especial reason why I didn't.

Q. Merely that you didn't wish to go to war?

A. That's the only reason.

(Trans. P. 261).

he stated that as Secretary of the Lumber Workers' Union of the I. W. W. his duties were to look after the accounts and funds of the organization, to keep in touch with the members, to answer correspondence and to superintend the distribution of the I. W. W. literature among the members of the organization.

Q. And, of course, as an officer of that organization, and carrying out its work you are, I take it, in sympathy with the literature and propaganda put out?

A. Yes to a large extent. There are some views that some writers take which I don't agree with, but as a whole with the object and aims of the I. W. W. as set forth in its preamble and much of its literature, I am thoroughly in accord.

(Trans. P. 262).

When questioned as to some of the literature distributed by the I. W. W. indicating that the organization aims to use any and all tactics that will get results, with the least expenditure of time and energy, and that the question of right and wrong does not concern its members, the appellant, while not denying that the I. W. W. is a revolutionary organization, seeks to explain that "any and all tactics" does not necessarily mean destruction or overthrow of government or assassination, but he makes no effort to define the application of the phrase as understood in the order. And so of the words "right" and "wrong" he seems to think they are relative terms merely, but insists in effect that his order is the sole judge of their application, regardless of how it may affect the employer class. (Trans. P. 264).

He identified a letter written at Fulton, La., on Feb. 3rd, 1918, written to him by J. F. Beal, relative to the distribution of I. W. W. literature. (Trans. P. 289).

He was further advised that he was entitled to the privilege of counsel in this hearing who could be present from that time and represent him.

Q. Do you desire to avail yourself of this privilege?

A. No.

(Trans. P. 270).

and at the same time was afforded an opportunity to submit any reason or argument he might wish to offer as to why he should not be deported to Canada on the charges appearing against him in the warrant, whereupon the appellant volunteered this further statement:

> "I came to this country as a Canadian. I absorbed my radical ideas in this country, and you want now to deport me for having those ideas. You can take me out of the country, but that won't take my ideas out of my head. Instead of stopping the spread of those ideas you will be helping me spread them, because I will take them with me wherever I go. Furthermore, if my ideas are a menace to this country and I have absorbed them in this country, why should you try to force such a menace on any other country. This is merely stating a reason, understand, why I should not be deported, not that I care very much where I am."

(Trans. P. 271).

At a further hearing held on March 4th, 1919, (Trans. P. 272) the petitioner identified a letter written by Otto Eisner, signing himself No. 295,-458, dated January 21st, 1919, the said Eisner being one of the members of I. W. W. recently convicted at Sacramento; (Trans. P. 293) also a letter written by him on Feb. 19th, 1919, to one, C. A. Rogers (Trans. P. 290); also a letter written by one Flogaus, addressed Care of E. I. Chamberlain, and written from the U. S. Immigration Detention House (Trans. P. 273-293), all of which letters pertain to the I. W. W. organization, and are set out in full in the transcript of record.

When questioned as to the I. W. W. stickers and literature indicating an encouragement of sabotage, the appellant testified as follows:

> Q. If the I. W. W. as an organization was opposed to the use of sabotage, why did they print literature and documents encouraging that sort of action?
>
> A. I did not state that the I. W. W. was opposed to sabotage. I stated that they had never taken any action one way or another

until 1918.

Q. They certainly encouraged it, did they not, by the printing of this sort of stuff and putting it out with their official seal on it?

A. I—they probably did, yes.

Q. What is the I. W. W. symbol for sabotage?

A. Their symbol for sabotage? They have many symbols. Sometimes the black cat—sometimes the wooden shoe.

(Trans. P. 275).

At the final hearing held May 10th, 1919 (Trans. P. 32), the appellant was specifically questioned as to the pamphlets and literature circulated by the Lumber Workers Industrial Union of the I. W. W., of which he was Secretary, and thereupon he admitted that among other literature he has distributed were "the Revolutionary I. W. W." by Grover H. Perry (Trans. P. 37); the "I. W. W. Song Book" (Trans. P. 99); and the pamphlet entitled "I. W. W. One Big Union of all the Workers — The Greatest Thing on Earth" (Trans. P. 188).

The doctrines and practices of the order, as

disclosed by this literature, may be indicated by short excerpts thereof:

From the Revolutionary I. W. W.

"The I. W. W. is fast approaching the stage where it can accomplish its mission. This mission is revolutionary in character. (Trans. P. 46).

We are not satisfied with a fair day's wages for a fair day's work. Such a thing is impossible. Labor produces all wealth. We are going to do away with capitalism by taking possession of the land and the machinery of production. We don't intend to buy them either."

(Trans. P. 47).

From the I. W. W.—ONE BIG UNION

THE I. W. W. PREAMBLE

"The working class and the employing class have nothing in common. There can be no peace so long as hunger and want are found among millions of working people and the few, who make up the employing class have all the good things of life.

Between these two classes a struggle must go on until the workers of the world organ-

ize as a class, take possession of the earth and the machinery of production and abolish the wage system."

(Trans. P. 188).

From the I. W. W. Song Book

HARVEST WAR SONG

We are coming home, John Farmer; we are coming back to stay.
For nigh on fifty years or more, we've gathered up your hay.
We have slept out in your hayfields, we have heard your morning shout;
We've heard your wondering where in hell's them pesky go-abouts?
It's a long way, now understand me; it's a long way to town,
It's a long way across the prairie, and to hell with Farmer John,
Up goes machine or wages, and the hours must come down
For we're out for a winter's stake this summer, and we want no scabs around.

(Trans. P. 113).

TA-RA-RA BOOM DE-AY

I had a job once threshing wheat, worked

sixteen hours with hands and feet,
And when the moon was shining bright,
they kept me working all the night
One moonlight night, I hate to tell, I "acci-
dentally" slipped and fell,
My pitchfork went right in between some
cog wheels of that thresh machine.

Ta-ra-boom de-ay,
It made a noise that way,
And wheels and bolts and hay
Went flying every way,
That stingy rube said, "Well,
A thousand gone to hell."
But I did sleep that night,
I needed it all right.

Next day, that stingy rube did say, "I'll bring
my eggs to town today,
You grease my wagon up, you mutt, and
don't forget to screw the nut."
I greased his wagon all right, but I plumb
forgot to screw the nut,
And when he started on that trip, the wheel
slipped off and broke his hip.

(Trans. P. 127).

CHRISTIANS AT WAR

Onward, Christian soldiers! Duty's way is plain,
Slay your Christian neighbors, or by them be slain.
Pulpiteers are spouting effervescent swill,
God above is calling you to rob and rape and kill.
All your acts are sanctified by the Lamb on high,
If you love the Holy Ghost, go murder, pray and die.

Onward, Christian soldiers, rip and tear and smite,
Let the Gentle Jesus, bless your dynamite.
Splinter skulls with shrapnel, fertilize the sod,
Folks who do not speak your tongue, deserve the curse of God.
Smash the doors of every home, pretty maidens seize,
Use your might and sacred right to treat them as you please.

Onward, Christian soldiers! Eat and drink your fill,
Rob with bloody fingers, Christ O K's the bill.

Steal the farmer's savings, take their grain
and meat,
Even though the children starve, the Saviour's bums must eat.
Burn the peasants cottages, orphans leave
bereft,
In Jehovah's holy name, wreck, ruin, right
and left.

Onward, Christian soldiers! Drench the land
with gore;
Mercy is a weakness all the gods abhor,
Bayonet the babies, jab the mothers, too;
Hoist the cross of Calvary, to hallow all you
do,
File your bullets' noses flat, poison every
well,
God decrees your enemies must all go plumb
to hell.

(Trans. P. 135).

SHOULD I EVER BE A SOLDIER

We're spending billions every year
For guns and ammunition,
"Our Army" and "Our Navy" dear,
To keep in good condition;
While millions live in misery,

And millions died before us,
Don't sing "My Country, 'tis of thee,"
But sing this little chorus:
Should I ever be a soldier,
'Neath the Red Flag I would fight.
Should the gun I ever shoulder,
It's to crush the tyrant's might.
Join the army of the toilers,
Men and women fall in line,
Wage slaves of the world! Arouse!
Do your duty for the cause,
For Land and Liberty.

(Trans. P. 112).

There also appears the following contributions in the song book:

"Our country? The country of millions of hunted, homeless, hungry slaves! The country of Colorado, Louisiana, Texas, Michigan, Pennsylvania, West Virginia and all the other innumerable scenes of labor's shambles? Not OUR country."

(Trans. P. 117).

"Make it too expensive for the boss to take the lives and liberty of the workers. Stop the endless court trials by using the Wooden

Shoe on the job."

(Trans. P. 170).

"War is Hell. Let the capitalists go to war to protect their own property."

(Trans. P. 170).

" 'Military preparedness' is a part of the 'preparedness of the capitalist class' for larger and more intensive exploitation of labor. One Big Union of the working class will be sufficient 'preparedness' to enable the working class to overcome their enemy—ON ANY FIELD."

(Trans. P. 181).

In the face of this record, showing as it does, three separate hearings, at each of which he was given full and ample opportunity to make such explanation, as he could of the charges filed against him, can it be seriously urged that the appellant was not afforded a fair and impartial hearing, particularly when he was apprised of his right to counsel, of which he did not care to avail himself.

From a careful review of the testimony, the following findings of fact were found by the Commissioner General, which are plainly fair

and impartial, and are clearly supported by the record:

> "The above named alien was arrested at Portland, Ore., on the ground that he has been found advocating or teaching the unlawful destruction of property.
>
> "This man states that during his period of residence in this country he has for the most part been employed as a lumber jack in the forests of the northwest; that he became a member of the I. W. W. in October 1916, and since the latter part of September, 1918, he has been Secretary of the Lumber worker's branch of the I. W. W., also that he has been at various times stationery delegate, branch secretary and traveling delegate. He is now in charge of the Union headquarters of the lumbermen's branch, Portland, which has a membership of about 35,000. He says that his duties as Secretary of the lumbermen's branch of the I. W. W. are to look after the accounts of the organization, supervise the work, keep in touch with the members, answer correspondence and superintend the distribution of I. W. W. literature.

He says that while he does not agree in all things with some of the I. W. W. writers he is in thorough accord with the objects and aims of the organization as a whole. As to the question of sabotage he attempts to say that the I. W. W. does not teach this doctrine. At the same time he admits that among other I. W. W. literature he has distributed the pamphlet entitled I. W. W. Songs and The Revolutionary I. W. W. These pamphlets are made a part of the record and an examination of same will clearly show that the first mentioned one does teach the doctrine of sabotage or the unlawful destruction of property and the second BOLSHEVISM, as will be noted from an excerpt taken from it as follows: 'We are going to do away away with capitalism by taking possession of the land and the machinery of production. We don't intend to buy them either.' "

(Trans. P. 27).

Bearing in mind this record, we fail to see wherein the Court could say there was *no* substantial evidence to sustain the charge that the petitioner was found advocating or teaching the

unlawful destruction of property.

"To teach" as defined by the Standard Dictionary is "to impart knowledge by means of lessons; to give instructions in; communicating knowledge; introducing into or impressing upon the mind as truth or information.

"To advocate" means, according to the same authority: "to speak in favor of; defend by argument one who espouses, defends or vindicates any cause by argument a pleader, upholder, as an advocate of the oppressed."

As stated by District Judge Neterer, in *ex parte Bernat,* 255 Fed. 429, a similar case:

> "There are several ways by which a person may teach or advocate. It need not be from the public platform, or through personal utterance to individuals or groups, but may be done as well through written communications, personal direction, through the public press, or through any means by which information may be disseminated, or it may be done by the adoption of sentiment expressed or arguments made by others which are distributed to others for their adoption and guidance."

As disclosed by the record, Neil Guiney, was and is an active exponent of the doctrines of the I. W. W., holding an important office in the organization, being Secretary of the Lumber Worker's Union, which he claims to have a membership of about 35,000. By reason of his leadership in that organization, he naturally is actively instrumental in spreading the propaganda of that order.

The notorious and unlawful practices for which this organization has been responsible, through its members, and which it has openly advocated are so well known and numerous as to hardly require any extended comment. It is a well established fact, that the I. W. W. has long advocated "direct action," sabotage, destruction of property, if necessary and various other means of gaining the object sought.

In the case of *U. S. vs. Swelgin,* 254 Fed. 884, which was a suit to cancel a certificate of citizenship, on the ground of Swelgin's connection with the I. W. W.—the principles and tactics of which order were in issue, the Court said:

> "No one can read these pamphlets and pronunciamento of the order without con-

cluding by fair and impartial deduction that it is not only ultra socialistic but anarchistic. It is really opposed to all forms of government. It advocates lawlessness and constructs its own morals, which are not in accord with those of well ordered society. It's adherents are anti-patriotic. They owe no allegiance to any organized government."

We therefore contend that the objection that there was no substantial evidence to support the findings of the Department is without merit. Not only that, but we believe that the court will go further and agree with the conclusions reached by the Commissioner General as found in his memorandum report to the Secretary of Labor:

> "That in view of his admitted activity in selling and distributing sabotage-teaching literature, the Bureau finds that he is guilty of the charge of advocating or teaching the unlawful destruction of property and upon that ground recommends his deportation to Canada."

This was likewise the opinion of the lower court, and upon a record, such as this, other

courts in other districts have come to like conclusions.

In re Dixon and *in re Bernat,* reported in 255 Fed. 429, Judge Neterer denied writs of habeas corpus, also sought through George Vanderveer, the attorney for the appellant in this case. Dixon and Bernat, aliens, were both members of the I. W. W. who were ordered deported on the grounds that they had been found advocating and teaching the unlawful destruction of property. It was likewise contended that they had been denied a fair hearing and that there was no evidence to support the charge against them. It was established at the hearing that they believed in the teachings advocated by the I. W. W., as disclosed by certain of its literature, among others, being the I. W. W. song book. The court, in its opinion held:

> "The testimony shows that Bernat has been a member of the I. W. W. for the last ten years, and Secretary of Branch No. 500, Seattle, for some time. His duties as such
>
> Secretary were to distribute literature, collect dues, handle accounts and solicit new members. From activity, as disclosed in the

record, the Court cannot say there is no evidence upon which to predicate the finding of the Commissioner General in each case. * * *

The matter is not before the court for review, but merely to determine whether there is any evidence upon which to base the finding. Under the law, the conclusion of the Department of Labor, if there is any evidence, is final."

On June 5th, 1919, District Judge Augustus Hand of the Southern District of New York, had occasion to test the legality of warrants of deportation of a number of aliens under the Act of Feb. 5th, 1917, on the ground that they advocated the destruction of property. The petitioner in each of those cases was an active member of the I. W. W. in the northwest, and had distributed its literature. While being held in New York, after being conveyed across the continent, under orders of deportation, they sued out writs of habeas corpus. Among them were Bernat and Dixon who had been unsuccessful in this attempt before Judge Neterer, as hereinbefore cited.

Judge Hand, in disposing of these cases, made the following comments, which are cited, in so far as they apply to the case in issue:

"The songs offered in evidence at the hearing such as the 'Harvest War Song' which contains the words, 'Up goes machine or wages' and 'Ta-Ra-Ra-Boom De-Ay' which has the line, 'My pitchfork went right in between some cog wheels of that thresh machine' plainly are intended to commend destruction of property. Though Kisil had counsel, no attempt was made to show that the songs attached to Exhibit A, which the Government offered in evidence at the hearing were not the editions in the possession of the relator, and it cannot be said that the sentiments expressed in these songs, which I have quoted above, did not furnish some evidence that the relator was engaged in circulating sabotage literature and consequently in advocating the destruction of property."

(In re Kisil).

"This relator testified before the Inspector that he did not believe in the destruction of property, but he had a stock of literature with which he was familiar, including the

book of Vincent St. John on 'The I. W. W., Its History, Structure and Methods,' published by the I. W. W. Publishing Bureau, and Walker C. Smith's Book on Sabotage. While he insists that the sabotage he believes in is not destruction of property, but only a slowing down of work or withdrawal of efficiency, and contends that the Walker C. Smith book is of only historical significance he was plainly seeking to enroll members, had literature for distribution which distinctly advocated sabotage and it I think sufficiently appears that he was engaged in distributing it. There was some evidence in support of the findings of the Commissioner as well as significant equivocation."

(In re Holm)

"In view of the fact that Bernat was Secretary of the Seattle branch and testified that he distributed literature, and in view of the fact that Exhibit B tends to show that the songs, the book of Vincent St. John and the book of Walker C. Smith were generally handled and distributed by the Seattle Branch, it cannot be said that there was no evidence before the Department, that the re-

lator advocated or taught destruction of property. To be sure, the relator denies that he believes in sabotage of a destructive kind, but his own statement is to be weighed against the fact that literature which intimates in effect that sobotage of a destructive kind is a desirable thing was generally distributed at the branch of the I. W. W. of which he was Secretary, and that the proceeds of sales apparently went into the treasury of the organization. The weight of these varying considerations was for the Commissioner of Labor and in deciding against the relator he cannot be said to have acted without evidence."

(In re Bernat)

"This man was taking applications for membership with knowledge of the class of literature which it appears from Exhibit B was being distributed through the branch officers of the organization, and was distributing the Industrial Worker, which in general appears to advocate the destruction of property.

"It is to be noticed that the booklet con-

taining the Preamble and Constitution of the I. W. W. advertises the I. W. W. songs and that at the bottom of page 15 of the Constitution, the Publishing Bureau is described as the 'official organ controlled by the general organization.' The book of Vincent St. John, like the song book, has on the cover, 'I. W. W. Publishing Bureau,' so that apparently the direct testimony in Exhibit B that the song books and the book of Vincent St. John are official publications of the I. W. W. is completely borne out. The relator was familiar with these official publications. He was therefore working to recruit members for, and promote the growth of the organization that publishes through its own Bureau, and circulates through its agencies, St. John's pamphlet, a book which described sabotage as a desideratum under certain circumstances. Furthermore, he specifically states that he is in favor of the teachings of the publication. * * One who solicits members for an organization when he knows that it disseminates such publications and who distributes the Industrial Worker that has constantly approved of

sabotage, may be held by such acts to teach the unlawful destruction of property himself."

(In re Dixon)

"The relator was a delegate and organizer of the I. W. W. He admitted distributing the book of Vincent St. John, though he denied distributing Pouget's book on Sabotage, and said Walker C. Smith's book was not for distribution to new members because they might abuse it. * * * His admitted distribution of book of Vincent St. John gave rise to a question of fact which the Commissioner might resolve against him in respect to advocacy of destruction of property."

(In re De Wal)

In his conclusion upon all these cases, District Judge Hand, in disposing of the contention that the I. W. W. literature offered does not involve advocacy of destruction of property, said:

"Most members of the I. W. W. organization may at the present time, either on grounds of principle or expediency, disbelieve in destructive sabotage, but those who distribute to prospective members the I. W. W. Songs of the edition appearing in Ex-

hibit A, the pamphlet of Vincent St. John, 'The I. W. W. Its History, Structure and Method,' and the book of Walker C. Smith on Sabotage for the purpose of familiarizing such prospective members with the doctrines and spirit of those publications, are open to a charge of advocating or teaching the destruction of property. These publications contain intimations that destructive sabotage may be desirable and useful. The possession for the purposes of distribution, or the distribution of such literature by an alien is some evidence of teaching the destruction of property upon which the Commissioner may make a finding against him, which no court has a right to disturb."

In view of the foregoing, it is respectfully submitted, without again reviewing the record of this case, that the one positive circumstance, irrespective of all the circumstantial evidence, that Neil Guiney, an active delegate, organizer and officer of the I. W. W. organization, participated in the distribution of the I. W. W. song book constitutes some evidence that he has been advocating the unlawful destruction of property in violation of the Immigration Act. Under the

law, the conclusion of the Department of Labor, if there is any evidence, is final. (*Nishimura Ekiu* vs. *U. S.* 142 U. S. 651), (*Turner* vs. *Williams,* 194 U. S. 279), (*Low Wah Suey* vs. *Backus* 225 U. S. 460),(*Healy* vs. *Backus,* 221 Fed. 358), (*Jeung Bock Hong* vs. *White,* 258 Fed. 23).

III.

It is further urged that there was introduced in evidence and incorporated in the record in this case, certain correspondence, which the appellant claims he had no opportunity to explain or rebut, and which he claims influenced the Commissioner General of Immigration or the Secretary of Labor in considering and determining this case. It is also suggested by way of illustration, that this was damaging to his cause, in that an agent of the Department of Justice reported that the petitioner had been convicted of a felony in the State of Idaho which statement was untrue.

This contention is clearly without merit. As can be readily observed, from an examination of the record, it consists of the complete file of the Department, and of necessity, contains documents and communications which may or

may not be hearsay, anonymous and immaterial, but which under a general filing system, are attached to the file, for ready and accurate future reference and for proper handling of correspondence. It may very well include, as it would, any communication received from the appellant's attorneys or his friends, protesting his innocence, etc., but it is unreasonable to assume or infer that such communications, unless examined into and properly introduced in evidence could or would have any bearing upon the merits of the case, or would influence the decision of the reviewing authorities.

This explanation must plainly be conclusive, as evident from a perusal of the memorandum of the Commissioner General summarizing the evidence which practically constitutes the detailed decision of the Department, being signed by the Commissioner General and approved by the Acting Secretary of Labor.

It will further be noted in this connection that the memorandum particularly calls attention to the fact that Guiney was acquitted on the charge of syndicalism in Idaho, and particularly refrains from discussing any other evidence,

except the admissions of the appellant and certain pamphlets properly competent and material in the case.

It will thus be seen that the immaterial, incompetent and hearsay testimony objected to by counsel could not under any circumstances have been taken into consideration by the Department.

Moreover, it is our contention, that it matters little what the files of the Department contain, provided that it does contain some evidence, that is material and competent, and supports the findings reached by the Secretary of Labor. This has already been demonstrated under a previous heading.

It is apprehended that the real purpose of the petitioner in raising this point is to discredit the officials of the department, charged with a sworn duty of enforcing the immigration laws, and to attack the integrity of the records.

Every officer who takes part in the formulation of these records is under the obligation of an oath of office requiring him properly to perform his official duties. If counsel has any complaint to make with regard to the conduct of the immigrant inspectors, or other officials or

employes who participated in these examinations, such complaint should be submitted, with its supporting evidence, to the Secretary of Labor or the Commissioner General. A habeas corpus proceeding is not the proper method of charging government officials with misconduct or proving them guilty. The officers are not on trial here. Furthermore the alleged "misconduct" is charged to a person not even in the Department of Labor, let alone the Immigration service which is solely responsible for the enforcement of deportation proceedings, but is charged to a person in an entirely different department; to-wit, the Department of Justice, the actions of which are not controlled by the Department of Labor or the Immigration Service.

If it is contended, on the other hand, that the Department, though acting in good faith, considered immaterial and hearsay evidence, outside the record, the following authorities must be conclusive of our contention, that this point is of no avail, where there was some proper evidence in the case to support the findings.

It should first be borne in mind that proceedings for the deportation of an alien under the im-

migration statutes are in no proper sense a trial for a crime or offense nor governed by the rules of such trials as to pleadings or evidence (*Siniscalchi v. Thomas,* 195 Fed. 701), (*In re Jun Yuen,* 188 Fed. 350), (*U. S. v. Uhl,* 215 Fed. 573), (*Ex parte Hidekuni Iwata,* 219 Fed. 610), (*Healy v. Backus,* 221 Fed. 358).

In the case of *Tang Tun v. Edsell,* 223 U. S. 673, it was urged, that incompetent evidence was injected into the record which was submitted to the Secretary of Labor. The Supreme Court held that neither the nature of these statements, nor the manner of their introduction, afforded ground for invalidating the proceeding.

> "Of these the Secretary might at all times take cognizance, and it would be extraordinary indeed to impute bad faith or improper conduct to the executive officers because they examined the records or acquainted themselves with former official action."

In the case of *Frick v. Lewis,* reported in 195 Fed 693, and affirmed in 233 U. S. 291, the court said:

> "Where a fair, though summary hearing has been given in ascertaining whether there

is or is not any proof tending to sustain the charge it is not open to the court to consider either admissibility or weight of proof, and they cannot interfere if anything was offered that tends, though slightly, to sustain the charge."

In the case of *In re Tang Tung,* 168 Fed. 488, the court said:

"That after examining the record and finding that a bona fide hearing had been granted, under such circumstances we do not understand * * * that any court is authorized to review the action of the Department of Labor in the matter of admitting or weighing evidence, or to consider whether the conclusions drawn by its officials were right or wrong."

In the case of *In re Jem Yuen,* 188 Fed. 350, the court said:

"Whether there was a fair hearing or not in the present case must be determined by the record, and the record, according to the petitioners' contention, shows that a fair hearing has been denied. The hearing at Boston is said to have been unfair because

INADMISSIBLE EVIDENCE was considered. The hearing on appeal is said to have been unfair because of alleged improper additions made to the record submitted at Washington and because the Secretary of Labor does not appear to have himself considered or decided it. As to the hearing at Boston there is no complaint that the applicant was in any way hindered in submitting such evidence as he desired, or of any refusal to hear what was submitted.

The complaint is that a record of proceedings of similar character at Richmond, Vt., in October 1908 and before the department on appeal was considered. This record purported to show that Jim Yuen then and there attempted to enter the country, was excluded after a hearing, and the exclusion was affairmed on appeal. WHETHER SUCH A RECORD WAS ADMISSIBLE OR NOT ACCORDING TO THE RULES OF EVIDENCE OBSERVED ELSEWHERE IS IMMATERIAL.

It is well settled that officers of the Government to whom the determination of ques-

tions of this kind is entrusted under the statutes like those governing these proceedings, are not bound by the rules of criminal procedure, nor by the rules of evidence applied in courts. It is not enough for a review of their decision on habeas corpus that there was no sworn testimony or no record of the testimony or of the decision. No formal complaint or pleadings are required. The alien's opportunity to be heard need not be upon any regular set occasion nor according to the forms of judicial procedure; it may be such as will secure the prompt vigorous action contemplated by congress and appropriate to the nature of the case.

I am unable to believe that the duty of the officers to give a fair hearing required them to shut their eyes to the contents of this former record or to do so without formal or independent proof of its contents."

In *Ex parte Poulioy,* 196 Fed. 437, District Judge Rudkin said:

"The ex parte affidavits taken * * * * could not change the result. Were I to exclude all incompetent testimony and determine the case de novo on the competent tes-

timony alone, I could not reach a different conclusion."

In *Ex parte Kwan So,* 211 Fed. 772, it was contended that the Immigrant Inspector acquired his information from sources outside the record, and based his judgment upon facts which were not made part of the record in a formal way. The court said:

> "While it is somewhat difficult for the mind, accustomed to the contemplation only of investigations conducted strictly in accordance with the time honored rules of judicial procedure, to adjust itself to the informal and sometimes ex parte methods of administrative efficers, I do not think that under the law as the same has been interpreted by the supreme court, the inspector was disqualified. Indeed, sometimes, in our court procedure, judicial officers act upon facts within their own knowledge and do not resort to formal proofs in the nature of sworn testimony."

A somewhat similar objection was urged in the case of *Choy Gum v. Backus,* 223 Fed. 487, arising in this Circuit. It was there charged that

the immigrant inspector clandestinely forwarded to Washington certain evidence which was never presented to the alien. This court held:

> "This kind of testimony while not ordinarily competent for judicial inquiry in the sense of a trial in a court of justice, has nevertheless been resorted to before executive officers and boards of immigration inspectors for determining the right of aliens to remain in this country and yet the aliens have been refused their liberty upon habeas corpus where the inquiry appeared to be fair and impartial, and where the immigration officers have been guilty of no abuse of discretion reposed in them. Such a case was *Healy v. Backus,* 221 Fed. 358. In that case many affidavits were taken and admitted, both for and against the petitioner and a very wide range of inquiry was indulged in by which information was gathered by means of letters and reports, and yet the court was of the view that the inquiry was fairly conducted toward the aliens."

In the case of *Wallis v. U. S.,* 230 Fed. 71, the court disposed of this objection in the following language:

"The evidence submitted to the Secretary of Labor was the testimony of each of the relators upon the hearing, the documents and articles found in their possession when arrested, and the hearsay result of certain inquiries of the immigration inspector addressed to the employes of the railroad upon which the relators were traveling when arrested. WE WILL DISCARD THE HEARSAY STATEMENTS and confine our consideration to the admissions of the relators and to the documents and articles found on them when arrested."

The rule is well stated in the case of *Lee Lung v. Patterson,* 186 U. S. 168, wherein the Supreme Court said:

"He (the Chinese Inspector) may determine the validity of the evidence or receive testimony to controvert it, and we cannot assent to the proposition that an officer or tribunal invested with the jurisdiction of a matter loses that jurisdiction by not giving sufficient weight to evidence or by rejecting proper evidence, or by *admitting that which is improper.*"

While the foregoing authorities would indicate that the Secretary of Labor may for certain purposes take official cognizance of the records of his department outside the precise record in the case, we do not wish to be understood as urging the broad contention that such evidence may be considered, where the alien was not confronted with same. We merely claim that the Secretary of Labor did not lose jurisdiction over this case simply by having incorporated in the record as part of the files, certain hearsay statements and evidence which are immaterial, provided there was proper proof adduced at the hearing, which in itself, was sufficient to justify the findings, as heretofore shown.

CONCLUSION.

Congress by the Immigration Acts of February 5th, 1917, and October 16th, 1918, was of the opinion that the tendency of the general exploitation of such views, as entertained by those advocating or teaching the unlawful destruction of property, is so dangerous to the public weal that aliens who hold and advocate them would be undesirable additions to our population—whether permanently or temporarily—whether many or few. That this power of self preservation is vest-

ed in Congress cannot be questioned. (*Turner v. Williams,* 194 U. S. 279.)

In the light of present events, the enactment of these laws was not only justifiable but absolutely necessary. The world's greatest menace today is not war, nor famine, nor the plague, but all of these combined and more, in what is known as Bolshevism. Bolshevism is nothing more than radical socialism or I. W. W.ism, in that they teach that the working class ought to control the Government. The danger that faces us today is that Bolshevism or I. W. W.ism will become world wide. Already it has spread most alarmingly. I. W. W.ism means repression and despotism. As thus far carried out in practice, it is evil and only evil. In this great country of ours, there is no need nor excuse for anarchism nor for bolshevism nor for I. W. W.ism nor for any of the other untried or discredited isms. There can be no justification nor excuse whatever for the attitude of those who preach or advocate political creeds or doctrines in conflict with the fundamental principles of our great free American government. Call it socialism, Bolshevism or I. W. W.ism. What's in a name? Their consistency is their only merit. They practice

just what they preach. Its primary object, as expressly avowed, is to overthrow existing governments—peacefully so far as discreet, but by organized violence when feasible. Next, all control of government is to be seized by the proletariat—which means the present laboring, wage-earning class. This means a seizure of the State in all of its functions, legislative, judicial and executive. Our Government is based upon a theory the very opposite of that which is the basis of I. W. W.ism. The basic theory of our Government recognizes individual property rights and the right of contract, which rights are the basis of private industrial enterprises, and safeguards the maintenance of these rights by fundamental laws controlling upon the law making power of the states and of the nation. I. W. W.ism in this country today teaches that our government is a government of fraud and of robbery, a government of injustice, a government of oppression, a government wicked in its formation, wicked in its administration and wicked in all of its promises for the future.

Such is the danger of the advocacy of the views entertained by Neil Guiney, who is permitted to remain in this country, simply by suf-

ferance. He is not one of us, and does not want to be one of us. He is an alien by birth and an agitator by choice. He has no place in this great country of ours. He is an avowed believer in the principles of the I. W. W. organization—an organization inimical to the maintenance and stability of organized government—an organization that has sprung up in this country, looking toward its demoralization and degradation. He is more than a follower—he is a leader in that organization, with ability to incite its members to the practices to which such organization is committed. He is a potent power of influence among that class of revolutionists. His release would only have the effect of producing greater difficulties to the officers of the Government to stamp out those who agitate and breed discontent.

It would be futile to shut our eyes to what the I. W. W. stands for. It is no longer a matter of opinion or conjecture. It is a disloyal and unpatriotic organization. Adherents thereof owe no allegiance to any organized Government, preaching as they do rebellion under the red flag of anarchy. Their purpose is to stir up strife, breed discord, agitate strikes and overthrow all

legally constituted governments. The character of this organization is well known, especially on the Pacific Coast, where by its lawlessness, it has become an outlaw.

It is to such an organization as this that Neil Guiney, the appellant, owes allegiance. While gladly reaping the benefits of American protection, he harbors in his heart, the love of a flag, that does not contain the red, white and the blue, or even the colors of the land of his nativity, but the international Red Flag—the flag of anarchy, strife and discord. The followers of this flag are taught that the law of the land was not made for them and that they exist only to be overthrown. The property of others is merely held for them to seize, to destroy as they will. In this movement, Neil Guiney is one of the leaders.

Those who cannot, or will not, live the life of Americans under our institutions, and are unwilling to abide by the methods which we have established for the improvement of those institutions from time to time, should be sent back to the countries from which they came.

We therefore earnestly contend that Neil Guiney, the alien, who came to this country,

seeking and securing its protection, lost and forfeited it, when he became an active member and leader of the I. W. W., teaching and advocating, through its pernicious propaganda, the unlawful destruction of property. Against such an alien, the Government of the United States owes a duty of protection to its law-abiding citizens, and, with that thought in view, did, under its sovereign powers of self preservation, enact the Immigration Act which it has here invoked by this order of deportation.

Neil Guiney, the alien, has had a fair and impartial hearing. The Secretary of Labor has found him guilty of the charge upon which his warrant of arrest was based. The record is amply sufficient to support the charge. We therefore respectfully submit that the order of deportation should not now be stayed.

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